

EXHIBIT A

UNITED STATES DISTRICT COURT

DISTRICT OF PUERTO RICO

In Re:) Docket No. 3:17-BK-3283 (LTS)
)
) PROMESA Title III
The Financial Oversight and)
Management Board for)
Puerto Rico,) (Jointly Administered)
)
as representative of)
)
The Commonwealth of)
Puerto Rico, *et al.*) March 17, 2021
)
Debtors,)

The Financial Oversight and)
Management Board for)
Puerto Rico,) Docket No. 3:20-AP-00003 (LTS)
)
as representative of)
)
The Commonwealth of)
Puerto Rico, *et al.*) *in 3:17-BK-3283 (LTS)*
)
Plaintiff,)
)
v.)
)
Ambac Assurance Corporation,)
et al.)
)
Defendants.)

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3 The Financial Oversight and)
Management Board for)
4 Puerto Rico,) Docket No. 3:20-AP-00004 (LTS)
5 *as representative of*)
6 The Commonwealth of)
Puerto Rico, *et al.*) *in 3:17-BK-3283 (LTS)*
7 Plaintiff,)
8 v.)
9 Ambac Assurance Corporation,)
10 *et al.*)
11 Defendants.)

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14 The Financial Oversight and)
Management Board for)
15 Puerto Rico,) Docket No. 3:20-AP-00005 (LTS)
16 *as representative of*)
17 The Commonwealth of)
Puerto Rico, *et al.*) *in 3:17-BK-3283 (LTS)*
18 Plaintiff,)
19 v.)
20 Ambac Assurance Corporation,)
21 *et al.*)
22 Defendants.)

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HEARING ON MOTIONS

BEFORE THE HONORABLE U.S. MAGISTRATE JUDGE JUDITH GAIL DEIN

UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

ALL PARTIES APPEARING VIA ZOOM

For The Commonwealth
of Puerto Rico, *et al.*: Mr. Michael Firestein, PHV
Mr. Lary Rappaport, PHV
Mr. Colin Kass, PHV

For Puerto Rico Fiscal
Agency and Financial
Advisory Authority: Ms. Elizabeth McKeen, PHV
Ms. Ashley Pavel, PHV

For Financial Guaranty
Insurance Company: Mr. Adam Langley, PHV

For National Public
Finance Guarantee
Corporation: Mr. Robert Berezin, PHV

For Assured Guaranty
Corporation: Mr. William Natbony, PHV

For Ambac Assurance
Corporation: Ms. Atara Miller, PHV

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CAT.

1 MR. FIRESTEIN: From Los Angeles, it's morning, so
2 good morning, Your Honor. Michael Firestein of Proskauer on
3 behalf of the Board, and I'm joined on this call as well by my
4 partners, Lary Rappaport and Colin Kass.

5 THE COURT: Okay. I'm going to ask you all before
6 you speak to identify yourselves again for the record to make
7 the transcript easier.

8 As an opening statement, let me just say I have been
9 through all the papers. There are a lot of papers. I don't
10 see that there's a general prohibition against any specific
11 type of discovery, so I don't think that there is a blanket
12 prohibition against e-mails or against audit-related papers
13 and work materials. So I don't really want to hear that
14 argument. But I do think that the discovery that was
15 authorized is very targeted. And the words used were used
16 carefully in drafting what the allowable discovery is.

17 So I'm going to ask you to link your argument to the
18 specific request, because I think that's the only way that we
19 can give effect to the very specific order. And I also think
20 it makes sense for us to do it in the order in the papers. So
21 we'll start with PRIFA. We'll finish that, and then we'll
22 move on to the next one. Okay?

23 All right. Who's going to start?

24 MS. MILLER: I will, Your Honor. Atara Miller from
25 Milbank, LLP, for the record.

1 We can identify those, and go back to the Board and
2 go back to AAFAF and make sure that we're very clear that we
3 are not trying to do a forensic audit of everything that's out
4 there. I don't want to do that. I used to do that. I don't
5 want to do that again. We can target this and make it very
6 specific to what we're trying to obtain.

7 MS. MCKEEN: Your Honor --

8 MR. FIRESTEIN: Your Honor, can I make one
9 observation? Can I make one observation? I'm sorry. I just
10 feel compelled to say this.

11 THE COURT: You need to first identify yourself and
12 then speak.

13 MR. FIRESTEIN: Michael Firestein of Proskauer for
14 the Board.

15 We have an understanding with the defendants that if
16 they receive responses or productions, that they would share
17 those productions with us. This is the first I've heard of
18 something that they have apparently received from a third
19 party, documents responsive to this discovery, and I don't
20 know what he's talking about.

21 And this is not the first instance I've actually had
22 to exchange -- so I want a commitment, if I could implore the
23 Court to have this confirmed, that when they get documents in
24 response to a subpoena, they will send them to us.

25 THE COURT: I'm assuming that that's the agreement.

1 MR. LANGLEY: Your Honor, we did provide those.
2 Those are the financial statements for PRIFA. They were sent
3 over, I believe, from Milbank.

4 So we can confirm with Mr. Firestein and make sure
5 that everything is being done above board, but those were
6 provided. I think that's a complete --

7 THE COURT: That's Mr. Langley speaking, by the
8 way.

9 MR. LANGLEY: I apologize.

10 MR. FIRESTEIN: This is Michael Firestein.

11 If they have been, that's fine. I have tried to
12 maintain attention to what we have seen under the
13 circumstances, and I don't recall that. So if that has
14 occurred, then I'll stand corrected on the point, but I don't
15 recall seeing it.

16 And if -- as long as it's the agreement that's going
17 to be provided, that's good enough for me. And I'll take
18 Mr. Langley and everybody else at their word on that point,
19 but I don't recall seeing that.

20 MS. MILLER: Ms. Miller for the record. Atara Miller
21 from Milbank.

22 I will confirm, or I have confirmed that we have
23 already produced the RSM materials. And I also -- just so
24 that there is clarity, our intention is to produce documents
25 as we get them on a periodic basis. So it's not -- you know,

1 we're not going to be uploading things every day, but we're
2 imagining to do it, you know, once a week if it's slow, twice
3 a week if things pick up.

4 So you have our representation, we've committed to it
5 already, and we will continue to produce any materials that we
6 receive.

7 THE COURT: Okay. Now, I'm trying to figure out,
8 Ms. McKeen, if there's a very targeted request of audit papers
9 relating to these two accounts, and in particular, the
10 description of these funds.

11 MS. MCKEEN: So I think what we just heard
12 illustrates the problem that the government parties have had
13 throughout this entire discovery process with what defendants
14 are doing, which is that they say that what they want is very
15 targeted, and they can be very narrow. And then when the
16 Court comes up with a good idea, which is can this be limited
17 to documents explaining the basis for this description, what
18 you hear in response is, well, it could be that, and then
19 these other things, and communications about these other
20 things, and to be fair, we've also just gotten some materials
21 that shed light on this, but we still need more.

22 I'm going to read what they asked KPMG for. They
23 asked KPMG for documents and communications concerning
24 Treasury's accounting practices, including the use of fund
25 accounting, GAAP, and GASB principles. I cannot imagine a

1 recognize that these are not all the documents that Ms. Miller
2 wants; but I think that the discovery is limited to
3 identifying the nature and location of the funds and the
4 restrictions placed thereon. I think that to the extent there
5 have been these two -- I can't remember if you're saying two
6 or three, I think two specific funds that the defendants have
7 identified, the audit papers which describe and/or explain the
8 nature and content of these funds, and any restrictions placed
9 on the monies therein, need to be produced.

10 And while I assume it will be subsumed therein as
11 special attention to the description of those funds that are
12 included in the audited statements, and I think what's going
13 to happen when this is over is I'm going to ask everybody to
14 submit -- see if you can work out the language together, if
15 you can. If you submit separately, I'll come up with my
16 own.

17 MS. MILLER: So, Your Honor, again, Ms. Miller for
18 the record.

19 I just want to make clear that you are contemplating
20 production of materials from the auditors beyond just the
21 disclosure, because, as you described it, I could imagine the
22 government cutting and pasting the disclosure and the audited
23 financials and saying, here you go. Here is the description
24 of the nature of the restriction.

25 THE COURT: No, I do -- I am ordering the explanation

1 for the changes, so that would -- it may very well include
2 e-mails. It may very well include communications. I don't
3 know. But I think that those documents would identify the
4 nature and location of -- instead of saying the Infrastructure
5 Fund, I'm saying these two specific funds that have been
6 identified by the defendants as potentially being the
7 Infrastructure Funds.

8 So does that work?

9 MS. MILLER: I think so. The devil's in the details,
10 but I am hopeful that we'll be able to work something
11 consensual out in terms of scope.

12 THE COURT: You see, there's always that fear of
13 letting me write it, which, you know, you never know what you
14 end up with that way. I think that in addition, when
15 supplemented with the additional discovery that the government
16 has agreed to produce, I'm hearing that that's going to cover
17 the topics that were allowed for PRIFA.

18 MS. MILLER: So I just want to cover some of the
19 other -- because I don't think we covered all of the pieces.

20 THE COURT: I do want to talk about, just before we
21 go into anything else specific, and this is to you,
22 Ms. Miller, what about a description of where was searched or
23 input into where should be searched? How do we get to that
24 point?

25 MS. MILLER: So I was going to go there next, because

1 And so given what we've already talked about
2 providing in connection with, you know, other things, I think
3 this idea of going back to a conversation about what somebody
4 said in an e-mail five years ago is not targeted or efficient.

5 THE COURT: All right. I agree that the discovery --
6 that an e-mail search on the words "infrastructure fund" is
7 not appropriate. I think that -- I think it would be fine in
8 the world of unlimited discovery, where you could have all
9 your wishes come true, but I don't think that it is the most
10 efficient way; and we are going to run out of time and money,
11 believe it or not, on this discovery. But I do think what the
12 defendants will have is information as to where all this money
13 went, came in, and the flow of the funds; and to the extent
14 that there are -- I don't know if there need to be account
15 opening documents or the like that would describe these
16 accounts from when the money -- that's what I understand
17 you're producing from PRIFAS, right?

18 MS. MCKEEN: That is correct.

19 THE COURT: Like the flow of all of the money? So at
20 that point --

21 MS. MCKEEN: Two separate things, so --

22 THE COURT: Right, but where the money came in and
23 where it was put, it seems to -- is what you're disclosing, or
24 no?

25 MS. MCKEEN: That information is being provided, yes.

1 documents Ms. Miller has described, and if we find them, they
2 will be produced.

3 And to the Court's earlier comments, we will provide
4 information about where we have gone to look for those things,
5 so that folks can be satisfied that we're not just, you know,
6 looking in one guy's desk drawer, because that's not what's
7 going on.

8 THE COURT: I do think that the audit papers, to the
9 extent that there were communications that explain why
10 accounts were set up, they would be included in those. I
11 think that's a more targeting search than a general e-mail
12 search. Okay.

13 MS. MCKEEN: (Nodding head up and down).

14 THE COURT: All right. So I'm going to ask you both
15 to work together on that; but if not, just submit something
16 separate, and I will wordsmith it.

17 MS. MCKEEN: Your Honor, when would you like the
18 parties to submit that?

19 THE COURT: I guess you better to do it sooner rather
20 than later, right?

21 MS. MCKEEN: It makes sense.

22 THE COURT: Okay.

23 MS. MCKEEN: I don't see any reason we couldn't get
24 it done by the end of the week. Obviously we want clarity.

25 THE COURT: I mean, and I am -- I should move on, but